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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 MELVIN JAMES BLAKE,

11 Petitioner,

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15 vs.
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17 J. TIM OCHOA, Warden,

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21 Respondent.
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CASE NO. 12cv2251-MMA (JMA)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE;**

[Doc. No. 17]

**OVERRULING PETITIONER'S
OBJECTIONS;**

[Doc. No. 18]

**GRANTING RESPONDENT'S
MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS;**

[Doc. No. 15]

**DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS
WITH PREJUDICE;**

[Doc. No. 1]

**DECLINING TO ISSUE A
CERTIFICATE OF
APPEALABILITY**

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25 Petitioner Melvin James Blake, a state prisoner proceeding *pro se*, filed a
26 petition for writ of habeas corpus pursuant to Title 28 of the United States Code,
27 section 2254, challenging the decision of California Governor Jerry Brown to
28 reverse the grant of parole by the California Board of Parole Hearing. *See Petition,*

1 Doc. No. 1. Respondent J. Tim Ochoa, warden of Chuckawalla Valley State Prison,
2 filed a motion to dismiss the petition on the grounds that it does not set forth a
3 cognizable claim for federal habeas corpus relief. *See Motion*, Doc. No. 15.
4 Petitioner opposed the motion. *See Traverse*, Doc. No. 16. The matter was referred
5 to United States Magistrate Judge Jan M. Adler for preparation of a Report and
6 Recommendation pursuant to 28 U.S.C. § 636(b)(1) and Civil Local Rule HC.2.
7 Judge Adler has issued a well-reasoned and thorough report recommending that the
8 Court grant Respondent's motion and dismiss the petition. *See R&R*, Doc. No. 17.
9 Petitioner objects to Judge Adler's findings and recommendation. *See Objections*,
10 Doc. No. 18. For the reasons set forth below, the Court **OVERRULES** Petitioner's
11 objections and **ADOPTS** Judge Adler's report and recommendation in its entirety.

12 DISCUSSION

13 *1. Standard of Review*

14 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. §
15 636(b)(1), the Court must "make a *de novo* determination of those portions of the
16 report . . . to which objection is made," and "may accept, reject, or modify, in whole
17 or in part, the findings or recommendations made by the magistrate [judge]." 28
18 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir.
19 1989).

20 *2. Analysis*

21 Petitioner raises two grounds for relief in his petition. First, he claims that
22 Governor Brown's decision reversing the parole board's suitability finding is based
23 on an unreasonable determination of the facts in light of the evidence presented to
24 the board. Second, Petitioner argues that Governor Brown failed to articulate a
25 rational nexus between the original offense characteristics and the risk to the public
26 currently posed by Petitioner. As Judge Adler correctly concludes, these claims are
27 foreclosed by the Supreme Court's decision in *Swarthout v. Cooke*, 131 S. Ct. 859,
28 863, 178 L. Ed. 2d 732 (2011) (holding that "the responsibility for assuring that the

1 constitutionally adequate procedures governing California's parole system are
2 properly applied rests with California courts, and is no part of the Ninth Circuit's
3 business").

4 Petitioner objects in general to Judge Adler's findings and recommendation.
5 Specifically, Petitioner argues that his due process rights were violated because he
6 was not afforded the opportunity to rebut Governor Brown's decision reversing the
7 parole board. After the Supreme Court's holding in *Swarthout*, the Ninth Circuit
8 explained that "[d]ue process is satisfied as long as the state provides an inmate
9 seeking parole with 'an opportunity to be heard and . . . a statement of the reasons
10 why parole was denied.'" *Roberts v. Hartley*, 640 F.3d 1042, 1046 (9th Cir. 2011),
11 quoting *Swarthout*, 131 S. Ct. at 862 (omission in original). Petitioner concedes that
12 he received this opportunity; the transcript from his parole hearing conclusively
13 establishes this fact. Petitioner was also provided directly with a written copy of
14 Governor Brown's decision, which stated the reasons why the governor reversed the
15 parole board's suitability finding. And the Ninth Circuit has made it clear that "the
16 Due Process Clause does not require that the Governor hold a second suitability
17 hearing before reversing a parole decision." *Styre v. Adams*, 645 F.3d 1106, 1108
18 (9th Cir. 2011). In sum, Petitioner received the full process he was due.

19 **CERTIFICATE OF APPEALABILITY**

20 A district court must issue or deny a certificate of appealability when it enters
21 a final order adverse to a petitioner. Rule 11(a) of the RULES GOVERNING SECTION
22 2254 CASES. Unless a circuit justice or judge issues a certificate of appealability, an
23 appeal may not be taken to the Court of Appeals from the final order in a habeas
24 proceeding in which the detention complained of arises out of process issued by a
25 state court. 28 U.S.C. § 2253(c)(1)(A); *Miller-El v. Cockrell*, 537 U.S. 322, 336
26 (2003). A certificate of appealability may issue only if the applicant makes a
27 substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).
28 Petitioner has not made this showing. Accordingly, the Court declines to issue a

1 certificate of appealability.

2 **CONCLUSION**

3 Based on the foregoing, the Court **ADOPTS** the Report and
4 Recommendation in its entirety, **GRANTS** Respondent's Motion to Dismiss, and
5 **DISMISSES** Petitioner's Petition for Writ of Habeas Corpus with prejudice. The
6 Court **DECLINES** to issue a certificate of appealability.

7 The Clerk of Court shall terminate this case and enter judgment in favor of
8 Respondent.

9 **IT IS SO ORDERED.**

10 DATE: August 1, 2013

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12 HON. MICHAEL M. ANELLO
13 United States District Judge
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